IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 7257 of 2005
DATE OF DECISION: 13.11.2006
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Zora Singh

..PETITIONER

VS.

Presiding Officer, Labour Court and others.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. B.N. Sehgal, Advocate with**
Mr. Rakesh Kumar, Advocate
for the petitioner.

Ms. Nirmaljit Kaur, Addl. A.G. Punjab
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ARVIND KUMAR, J.

The petitioner joined respondent Nos. 2 to 4-department as Mali on 7.3.1987. However, his services were terminated on 14.1.1993. He agitated the matter before the appropriate Government, who referred the dispute to the Labour Court for adjudication. The Labour Court, vide award dated 16.9.1997 ordered re-instatement of the workman with continuity of service and full back wages. It appears from record that pursuant to the said award dated 16.9.1997, the petitioner was re-instated on 29.7.1998. He continued as such uptill 1.3.1999 when his services were again terminated by the department on account of non-availability of any work and extra post. The petitioner again raised an industrial dispute by serving a demand notice on 12.3.1999. In the meantime, the writ filed by the department against the award dated 16.9.1997 was dismissed by a Division Bench of this Court on 13.11.2000. The industrial dispute raised by the petitioner, this time again, was referred to the Labour Court for adjudication. The petitioner filed statement of claim before the Labour Court. The respondent-department contested the claim of the petitioner. The Labour Court vide the

impugned award dated 20.8.2004 dismissed the claim of the petitioner.

Dissatisfied with the same the petitioner-workman has filed the instant petition under Articles 226/227 of the Constitution of India questioning the legality of the impugned award dated 20.8.2004.

Upon notice of motion respondent-department filed written statement. Justifying the award of the Labour Court dismissal of the petition has been sought.

We have heard learned counsel for the parties and have perused the paper-book carefully.

The main grouse of the petitioner is that his services were terminated by the department on 1.3.1999 without complying with the provisions of Industrial Disputes Act, 1947 (for short the Act). There is merit in this contention. While terminating the services of the petitioner vide order dated 1.3.1999 (Annexure P-3), the stand of the department was of non-availability of any work and extra post for the petitioner. The said ground taken by the respondent-department does not fall in any of the excepted categories contained in Section 2(oo) of the Act. Thus, we have no hitch to say that the termination of the workman from employment constitutes retrenchment within the meaning of Section 2(oo) of the Act. Once this conclusion is logically arrived at, in our view Section 25-F obviously would come into play which provides protection to an employee who had to his credit service of 240 days in 12 preceding months from the date of termination, without adopting due procedure laid down therein. It goes undisputed on record that the petitioner worked with the department from 7.3.1987 till 14.1.1993 when his services were initially terminated by the department. The said termination order was set aside and the petitioner was awarded re-instatement with continuity of service and full back wages vide award dated 16.9.1997. Thereafter, pursuant to the said award dated 16.9.1997, the petitioner was re-instated into service w.e.f. 29.7.1998, meaning thereby he was deemed to be in service of the respondent-department right from the date of initial termination i.e. 14.1.1993 till his joining on 29.7.1998. Thereafter, he worked as such up to 1.3.1999 when his services were again terminated. He, thus, had obviously completed completed 240 days during the said period. Admittedly, there is non compliance of Section 25-F of the Act. An employer cannot and should not

rub off an employee without by-passing the provisions of law. Provisions of Section 25-F of the Act are couched in the mandatory form and non-compliance therewith has the result of rendering the order of retrenchment vitiated. We fail to understand as to what had impressed the Labour Court to conclude that from the contents of termination order dated 1.3.1999 no violation of provisions of Section 25-F of the Act is made out. We have no hesitation to say that the Labour Court has completely erred in arriving at the aforesaid conclusion.

Therefore, the instant petition succeeds and the same is allowed, thereby quashing the impugned award dated 20.8.2004 passed by the Labour Court. Accordingly, the petitioner is re-instated with continuity of service. The question, however, remains with regard to his back wages. It is now well settled that having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto, instead of employer the plea is required to be raised by the employee that he was not gainfully employed. In other words, the initial burden is on the workman to prove that he was not gainfully employed. However, in the instant case the petitioner-workman has not adequately discharged the said burden. No cogent evidence has been produced by the petitioner to prove that he remained idle during the interregnum. However, keeping in view the vindictive attitude of the respondent-department in terminating the services of the petitioner, without adopting due procedure prescribed under law, not only once but twice and considering the fact that the petitioner has been dragged into unnecessary and avoidable litigation by the respondent-department, we deem it appropriate to grant 40% back wages to the workman from the date of demand notice i.e. 12.3.1999 till his re-instatement. No costs.

(ARVIND KUMAR)
JUDGE

November 13,2006 **(J.S. NARANG)**
Jiten **JUDGE**